

**SEDGWICK COUNTY
BOARD OF ZONING APPEALS
MINUTES**

June 7, 1999

The regular meeting of the Sedgwick County Board of Zoning Appeals was held at 3:34 p.m. on June 7, 1999, in the Metropolitan Area Planning Department Conference Room, 455 N. Main, 10th Floor, City Hall, Wichita, Kansas.

The following members were in attendance: Chairman, GARY WILEY; KATHLEEN GIDEON, GRANT TIDEMANN (arrived at 3:38 p.m.) JANA MULLEN.

The following Planning Department staff members were in attendance: Interim Secretary, Dale Miller, and Recording Secretary, Lisa Estrada.

Also present, Roger D. Hughey, Counsel to the Sedgwick County Board of Zoning Appeals. Jennifer Magana, Assistant County Counselor.

1. Approval of Minutes for February 1, 1999 and March 8, 1999.

WILEY: First order of business is to approve the minutes for February 1, 1999 and March 8, 1999. Did we receive March 8th?

MILLER: I still may be working on those.

WILEY: So, it will just be for February 1st, correct? There were only two of us here so do we defer that?

MILLER: Probably should.

WILEY: Until the next meeting? Do I hear a motion to defer?

MULLEN moves **WILEY** seconds, to defer the Approval of the minutes for February 1, 1999, until our next meeting.

MOTION CARRIES 3-0.

- 2. CoBZA 2-99** – This case is an appeal of the County Zoning Administrator’s opinion that the applicants are operating an illegal business on lands (approximately 9 acres). It is the opinion of the zoning administrator that the applicants are operating a “manufacturing, limited” operating that requires a “conditional use” in the “LC” Limited Commercial or “GC” General Commercial Zoning Districts.

That part of the West Half of the Northwest Quarter of Section 23, Township 29 South, Range 2 West, beginning at a point on the West line of said Section 23, being 1909.49 feet South of the Northwest corner of said Section 23; thence South 89 degrees 12'25"East, 1320.98 feet to the East line of the West Half of said Northwest Quarter; thence South 3 degrees 42'57"West, 329.93 feet on the East line of the West Half of said Northwest Quarter; thence North 89 degrees 12'25"West, 1322.90 feet to said West line of said

Northwest Quarter; thence North 4 degrees 02'05"East, 330.04 feet to the point of beginning.

And

Beginning at a point on the West line of said Section 23, being 2239.53 feet South of the Northwest corner of said Section 23; thence South 89 degrees 12'25"East, 1322.90 feet to a point on the East line of the West Half of said Northwest Quarter; thence South 3 degrees 42'57"West, 329.48 feet to the Southeast corner of the West Half of said Northwest Quarter; thence North 89 degrees 12'25"West, 1324.72 feet to the Southwest corner of said Northwest Quarter; thence North 4 degrees 02'05"East, 329.58 feet to the point of beginning.

MILLER: This is the fourth appeal within the last two meetings that we've had, as I understand it. Dale Miller, Planning Staff, as I understand, is a case where, the applicant is appealing the County Zoning Administrators Interpretation. That these folks are operating a business that requires different zoning than what they have in place currently. If I understand correctly, their argument is they feel like they have been in operation prior to the effective date of the Zoning Ordinance and so they would not be subject to that and be considered a non-conforming use. This I believe is the basic argument. They are located at 151st Street just south of 95th Street South just west of the Clearwater City limits. (Presented slides of the area and reviewed the following comments from the Secretary's Report:)

STAFF REPORT

WILEY: Any questions of staff? For all of you that are here and intend to speak at today's meeting I need to swear you in. Would you all please raise your right hand? Do you solely swear that the testimony that you are about to give is true and correct so help you God?

AUDIENCE: Yes.

WILEY: Thank you. Would the applicants like to start off here?

CALVIN D. RIDER, BROWN, DENGLER, GOOD & RIDER, L.C., 200 EAST FIRST, SUITE 200, WICHITA KS 67202: I am here representing the applicant Stefan Przystanski, and the Topiary Art Works. I just have a few primary comments that I want to make. I will pretty much turn it over to Stefan and some of the witnesses that we have. I don't know how you wish to proceed. But, if I'm not proceeding how your accustomed or you don't like it stop me at any time and I will change gears. We can either do an informal hearing, where I can have the witness stand up here and you can ask questions, or as I've seen it done here in the past, kind of a questions and answer right here.

What we are doing here is objecting to the Zoning Administrators decision that we have improper zoning at Mr. Przystanski's business. There are really three reasons that we object to that decision. The first is, It's just factually incorrect the zoning decision is incorrect and I'll get into that in greater detail. The second reason is, the operations that are going on there in the country, outside of Clearwater, are agricultural, farming, and are exempt from the countywide zoning ordinances. The third basis for our position is, that this use existed prior to the adoption of the countywide zoning ordinance which was adopted December 12, 1984, effective January 1, 1985. As part of our application and also objection to the zoning administrator's decision, we provided both the zoning administrator with the appeal, and the Board a notebook, that sets forth the exhibits and the information that the zoning administrator was provided with various receipts, and deeds to show the

existence of this operation prior to 1984.

If you look at the zoning administrator's decision, I can summarize this real quickly, we are here in front of the Board today, because, we do not have receipts for welding supplies. That is the best that I can determine, that is where we are. I will try to fill that in as we go. But, looking at the decision, that was the sole basis of the decision that we don't have receipts showing that there was welding supplies back in 1984 to prove that we performed some of the operations we do. Mr. Przystanski has a greenhouse, so if there is any doubt about what the operation is, it is a greenhouse. There are also topiary works. When he first came to my office I had no idea what topiary was. The villains over there, are a couple of bears sitting over here and that is what they are. I will have, if the Board desires, Mr. Przystanski can tell you how these are made and constructed. Essentially, I liken them to the wire basket that you get at Wal-Mart or anywhere else. You have a wire basket, and the plants are in the basket. Mr. Przystanski does that in his greenhouse, but he also does a lot of his topiary work, where the basket is on the inside, is the framework, the skeleton, the bones of the artwork. The moss is then placed on that, and then the moss is planted. You see the one inside the basket the kind of clump there with moss that is a bear, and then the one with a little bit of green is one that is growing and the plants are on the outside of the basket rather than the inside.

Throughout this the county has really taken a position that Mr. Przystanski is trying to get away with something out here. I can assure you that he is not doing that. We did have a some criminal charges or some charges in county court for vehicle storage and some zoning ordinances. Those have been resolved, Mr. Przystanski agreed to pay a fine for vehicle storage on some charges out there and I will get into those. But, the only thing that Mr. Przystanski is really trying to get away with is what he has been getting away with and what he has been doing, his profession since 1984 out there. In 1984, Mr. Przystanski purchased this property and in your package there should be a deed showing that he purchased this property in May 1984. The greenhouses were already in existence and that is when he began growing the plants and started the topiary and did the topiary operations there. The greenhouse operations are self-explanatory; we have some slides that we can go through in a second. For the first part, our contention is that the zoning administrator's decision was factually incorrect.

I would like to go through that a little bit and just look at the decision. It is dated May 15, 1999, and it states administrator's opinion, "That the topiary manufacturing was not a function of the original part of the greenhouse business." He goes on to say that, "He does not dispute that the greenhouse has non-conforming rights. But that it is apparent from the receipts that if the word "topiary" is being sold from the premises they were purchased and modified and possibly the moss, and plants were planted in them and then resold." The next sentence I think is really telling, he says, "The reason that he believes that the topiary was not a function of the greenhouse, was because there were no welding supplies, no metal rods, welding rods, oxygen acetylene for torches etc. That indicates to him that the topiaries were purchased in the basic form they were sold." In other words, it is his position that they were brought in and not constructed or not built right there on site.

The decision goes on and on. The last page, it lists four items that are the complaints, and they list them, illegal use of semi-trailers for storage. They need to be removed immediately. Those were removed in January of 1999 and are gone as part of the County action that has been resolved. Number four trash-junk stored outside. That was some equipment, and a tractor out there. The trash has been cleaned up and the area around has been cleaned up. The code deficient buildings and inadequate restroom facilities, Mr. Przystanski has purchased property in Sedgwick County and we have the builder here to speak if there are any questions and we will have him explain what the status of this building is. To resolve this, Mr. Przystanski has gone so far as to purchase land, and he is

going to be constructing a building in excess of \$200,000.00 to move most of his operations into an area that is already zoned industrial.

What we proposed to the County was that he would continue his greenhouse operations as they existed in 1984 and now. And do the topiary work that he performed, his own topiary work and some of the simpler and larger ones. Primarily, and his wife and a couple of helpers, but the primary business would be the agriculture. The wire baskets that the County seems to object to would be placed in this new facility that he has gone to considerable costs. That resolution was not acceptable to the County and despite that proposal by us, it is still our position that between the agriculture use and the existing use that he had in 1984 that he could keep his operation going as it is now, between those two.

In looking at the decision where the welding supplies were not provided, in a letter that I responded back to the zoning administrator, I suppose that it was interesting that we did provide welding supplies. After basing his decision, that we did not have any welding supplies, and you can look in the book that I provided, there are supplies for and a receipt from Lamptening Welding Supply for spot welding, and other items, it appears a few documents before item number two in your book under invoices. The receipts are actually under the purchase order section and is one of the last few items in purchase orders, but there are receipts for welding supplies, wire, sheet metal, gas, pipe and these are all dated in 1984. It is our evidence that these types of operations were occurring back then 15 years ago. I was just surprised and amazed that Mr. Przystanski could still come up with these types of documents that you see in front of you. The welding supplies, the invoices, the evidence of sales of topiary and there are hundreds of receipts of topiary sales all over the country that are dated in 1984. We stated that we would be more than happy to provide receipts for any other years, 1985 on, but we supplied for 1984 because that was the year before the zoning enactment. I think when looking at the documents, and the invoices and the receipts you can see that certainly his operation as a topiary art was occurring in 1984.

We have some individuals here that worked for Mr. Przystanski that have come back for him to verify that and will be up here to say that what they did for him in 1984 and what type of operations he was conducting in the art work and the greenhouse operations.

The second and I think probably the most important point that we have is that this is an agriculture use. Agriculture use is a difficult term in this state from researching and far as greenhouses, I poured through the books, and poured through the Kansas Statutes trying to determine, greenhouse does that fall under the agriculture use and does that fall under farmland? I can tell you that everytime that I found greenhouse or horticulture or ornamental nursery, the Attorney General or the court or the statutes have confirmed that is farm and agriculture use. The Kansas Statutes starts in KSA 2-3201 which is our statute that is the basic statute of our idea of farm operations in this state, it is entitled "Protection of farmland and agriculture activities." It states that the general policy of the state, it is declared the policy of this state is to conserve and protect and encourage the development and improvement of farmland for the production of food and other agriculture products. The definition of agriculture activity in the statute, means the growing or raising of horticulture and agriculture crops, hay, poultry, livestock and livestock, poultry and dairy products for commercial purposes the growing of horticulture products for commercial purposes. Horticulture has been defined in the cases and in the statute and in the dictionary that I have as the "science and art of growing fruits, vegetables, flowers, ornamental plants."

In the Kansas Statute dealing with cities and municipalities, for annexation by cities they define what

land devoted by agriculture use is, and it means “land that is devoted for horticulture products, including but not limited to mention anywhere from bees to fruits, to berries, to nursery, floral, ornamental and greenhouse products. “ The statue dealing with property evaluations, to determine how the land should be taxed has the very same definition for land devoted to agriculture use, horticulture products, and ornamental greenhouse products? Our statues that exempt agriculture uses are 1929-21 and 1929-08 that specifically say that zoning regulations are not applicable to existing structures, to the existing use of the structures, and to land, for agriculture purposes. The county zoning ordinances in Article I, Section E, similarly say that agriculture land is exempt.

With that I still had a good idea of what the definition was, and how the Kansas Legislature was addressing this. I turn to the Attorney General, to see if the Attorney General has decided whether greenhouses specifically are considered farming operations. The main opinion that I could find was a 1996 opinion and this was dealing with a taxation opinion, that said dealing with the definition of land devoted for agriculture use. What they had there was, that land agriculture and non-agriculture use, and the Attorney General said, “You don’t look and you can’t divide the property into a percentage ratio. Just try to make a determination, this is part agriculture, and this isn’t, it is either agriculture or it is not.” You can not define it more restrictively than what the court does. Some of the cases and some of the basic premise of this are that zoning regulations are construed in favor of the property owner and the courts have generally given broad reading to what constitutes an agriculture use. Some of the areas that have been determined, that constitute an agriculture use are: greenhouses, the operations of commercial feed lots, raising hogs, building a farmhouse, operating a landing strip, airplane landing strip, that was considered a farmer was landing his plane they said that was considered agriculture, quarrying rock, and raising exotic birds.

After that I turned to Kansas’s cases and looked at another case dealing with sales and use tax exemptions, a case of the matter of Alex R. Mason, the Kansas Court of Appeals case. This is KSA 21-863. This case found the growing, cultivation and selling of ornamental plants, by commercial greenhouses was agriculture use or farming for the sales and use tax exemption. They went through a definition of what horticulture was and what agriculture is. I do not want to belabor the point but case after case that I have found, the very same definition in another KSA case they define the term farm, the farm use in the Kansas Administrator Regulations, is a nursery, greenhouse, or other horticulture commodities. I think that looking at the statuary and the Attorney General, and the Court decisions that the type of operation that you will hear that he is operating is certainly agriculture, certainly a farm use, the horticulture use, that is exempt from the zoning ordinances. Regardless of whether his existing use back in 1984 and whether he has expanded his existing use or not the authority is what is that land used for and what is the use now. His use of the greenhouses, his use of the facilities, the buildings that have been added on, that use is agriculture and certainly when he moves operations to the site that is already zoned industrial there is no doubt that these buildings and the whole area will be agriculture use. As far as the existing use I will just have Mr. Przystanski step forward and answer any questions that you have and tell the board a little bit about what he does.

WILEY: Are there any questions of Mr. Rider? Thank you.

STEFAN PRZYSTANSKI, 9926 S. 151ST STREET WEST, CLEARWATER, KANSAS, and APPLICANT: Good Afternoon. Some of you might not understand me because this language is not my first language. I came here to this country in 1974, and I am slowly like the pioneers I end up in Wichita in 1980. These here represent over 30 years of my life that I devoted to not only growing plants but also like he mentioned, art and science of growing of plants. I have been called but, unjustly, the I have created topiary art in this create as a topiary artist. I work closely in the past, and in the future with this involved. I show you something that is dated in 1984. I think the slides show the plants are first, this one greenhouse is south road, about four years ago we were almost completely destroyed by winds. In the middle of 11:30 at night, on July 4th. This is a new wall because it was rebuilt. The greenhouses are 30 feet wide and 124 long. They are doubled wall putty, inflated, it is shaded right now because the sun and the heat and they are cooled on the south end of each greenhouse there are misting pads that the water is misted and the fence pulling the air through and cooling it. This is the building on the north side that is what we grow right now. These are about 4 or 5 days old.

We grow houseplants, bedding plants, many hanging baskets, and then 6-inch geraniums and for Christmas we grow poinsettia they are sold locally. The greenhouses look sparse right now because the major selling season is almost over right now we are running special programs with the stores. This is the south end of the greenhouses, that is the front or the north row. This planter is a 16 inches moss basket that we make, that is like the wire basket with the moss on the outside and we also grow plants in it and we sell locally many in Sedgwick County, and many in Kansas over 150 to 200 miles radius. These are hanging baskets, we grow several layers, most of the time two layers of plants because in this market just like all over the country, you have to be very competitive. You have to use the greenhouse to, sometimes we run four layers of plants just to squeeze and make some profit. Because when I came here in 1984 the plants were selling for more than they are selling right now. We used to sell, wholesale at \$5.00, right now you can buy hanging basket for \$4.40 at Home Depot, or Lowes. The rotation has to be a double cropping or triple cropping something between November and like right now we will grow 2, 3, 4 crops sometime. We grow from seeds, we grow for cuttings, and we even get help from sources all over the country to help us with some unusually, new varieties the European that are grown in tissue culture labs. Like Boston Ferns we procreate them by ourselves by division, you take a full-grown plant and you ripe it apart, and if you look at it closely, there are little plants all bunched together. This basket takes about a year and half to finish almost ready to go to a store. There you can see some plants growing in hanging plants, that plant is a bougainvillea and it has been growing for over a year right now. It's been growing in a smaller container, then transplanted into a bigger one and this spring we transplanted into that 14 inches moss basket and some of them are ready and some of them will be ready in about a month. This greenhouse and this is the front of the middle one, in the corner here that is the area where we plant the small topiaries, the tabletop.

The topiaries that we make actually I do most of it the framing and the stuffing are two different types. There is tabletop, they are small up two 34 to 36 inches in height and then life size and over life size. These are the pictures when you enter half way on the driveway, behind that building there is a house right now. When I purchased the property there was no house, there was just a small building that the people who grew tomatoes before, and they used that building as part of a little office in the corner and the restroom and the storage area and sorting area for tomatoes. When I get there in 1984, just put a bed in the corner and a little sheet to separate it and I slept there and eventually converted into a house. Over a year ago we added to that house like another house with a basement. So it is a full house right now. You can't see it but it is behind there. The greenhouses will when the county agents were there I think last year in the summer time, I think July or August

most of the greenhouses were empty. At that time it was really hot and we condensed many of the houseplants to two greenhouses. One greenhouse to grow on and the other greenhouse to propagate. Take little cutting and put in little plug trays and they grow for two or three weeks and then we shift them into a hanging basket to finish it.

This is that letter that I show you by Mr. Kadman, this is the picture that his associate took in 1984. That topiary is about 10 feet high. That giraffe is 14 feet high. It was made not in Clearwater but it was made in Haysville because when I came here in 1980 I had a little shop behind the old Derby refiner the old Trumble Industrial Park. Then I came across the greenhouse in Haysville and I purchased that and when I was in Haysville I needed more room and then I came across the place in Clearwater. This is some of the tabletop and some of the framing that we do. This is I think was 1991, two horses for a gallery mall, in St. Louis Missouri. That is ten feet long cord and that was fully made in our place and planted and I made crates for it and we put it on a truck and we shipped it there. They are still alive at that Mall. This is one of the things that I just made recently last week for Kansas City, Botanical Garden. It is called POW Gardens it is a series of several different topiaries, butterflies, and that is the way I do it. The frames made the metal frame and then the moss is just stuffed into the frame and usually the inside of the frame is filled with moss or soil. There is irrigation on this, there were pop up sprinkles at two different points. This form was shipped only in the most formed condition. They will plant their own plants and design different annuals that is part of the frame. Like this frame there is no machines involved except the welder all the bending that has been done has been done by my own hands with a little jig and it is cut one piece at a time and just formed to create something like this. Takes a long time to do it.

These are some of the little tabletops. Table tops we sell locally and we sell throughout the country through garden center flower shops, we ship them by UPS. This is one of the large butterfly's 10 feet wings span. This is how it is planted after the frame is stuffed with moss then we grown little plants, and the person who plants punches a good size hole in that form and then the whole root ball is placed inside that formed and the moss is squeezed and it is packed with moss and it is pinned down with little green pins. What are we going to do with the building after we move? There is no machinery except the spot welders. There are no gases, no electrodes, and just a spot welder. It is a welder. Believe it or not, we roll these rings by hand through three low growers that I have made and we push them through and these wires we receive them from the wire factory already pre-cut to the length. We just bend the forms like that it, is all done by hand.

After we move all this, we will be storing like we are right now the soil that we use to plant and plants and some may ask the size of the building and how are you going to fill it up? When we order soil we usually order a truckload 40 or 50 feet long trailer. Again, to be competitive we have to order in bulk in large quantities to get lower price and it usually last us for about four or six months it depends on the seasons. We will be planting poinsettias the first we in August. We have a fork lift, the heaters we use in our cargo trucks when we deliver plants and poinsettias there are some cooler that we use in the greenhouses. Some of the supplies, there are pins, for pinning the plant on the topiaries again we have to buy in bulk to save. Even though this was purchased maybe a year ago. Money saved is money earned. These are the boxes that we use to ship plants and usually when the plants are boxed up we keep them overnight because there is not always enough time to box it all up and ship to the airport. This is the area where we make the most baskets. What she is doing she is bending the ends and bending inside and these ends are used to go around with the filling in that is holding the moss to the outside of the wire basket. That is the view from one of the moss benches and whoever works there put the moss on the moss basket. This again is the greenhouse. This is our propagation area. Little two or three inches long pieces of plants being cut and inserted into the soil

and the trays with about two inches high plugs. That is another propagation area.

Three that I made in 1986 and was displayed and <AWAY FROM MICROPHONE>. They order at the time I think somewhere 800 to 2,000 at a time. We have a standing order, open order that is spread out throughout the whole year. We are doing this for I think for about fourteen years right now. The letter from the city or the zoning administrator, his feeling that I never made topiaries from scratch like I think that is what he calls it. I do not know how else can I prove, there is a person who worked with me in 1984, Mr. Kedham, there is drawings that I used to make something and when someone wants something like a squirrel or an elephant or something pretty extended I just follow this drawing. Most of it is old. Do you have any questions because I am not a professional speaker?

They will send us a drawing and they will ask us to do an exact copy like it are in topiary. I am fortunate to have this talent to be able to lift anything off the paper no matter what size they send me and do it to the exact specification that the customer wants. In 1984 because I think that date is important I was making topiaries in Clearwater and to purchase that property, when I moved from Haysville to Clearwater I was growing plants in Haysville at the same time when I was making topiaries and the reason we made a house over there to live there is because growing plants is not only putting it in the soil, or the topiaries planting in the moss and just leaving it and go on a long vacation one has to be there 24 hours a day. Right now we have a generator so when the power goes off the electricity is there but sometimes the fan belt will snap, when it is a 100 degrees. It has to be exchanged within 30 minutes or if you don't do that the plants will cook and the temperature plus all they will get stunned and it will take about if you are lucky about a month to recover it. With poinsettias you are finished because the timing would be off anyhow. Just like humans who get a stroke. Winter time the heating again would guess even though we have new furnaces and we have in the warehouse and the buildings we usually keep two to three furnaces on hand, brand new ones in case the one that fails can not be fixed it has to be replaced right away within at least two hours, if it is not windy and 20 below zero because the temperature will go down very fast. My alarm clock during the wintertime when it is cold is usually set so that I am up every two hours. To get up and go around to make sure that everything is running. Just stick my head into the greenhouse to feel the temperature. There is a saying if a life has meaning it does not need pleasure. But this is my pleasure.

What some people will find in my area and I have been told many times that I am working too hard. But I was invited to this country to work because of my talent not to come for a free ride. I see more and more that some people do not like when people are successfully and that maybe the problem.

JENNIFER MAGANA, ASSISTANT COUNTY COUNSEL: You are having another building built some place?

PRZYSTANSKI: Yes, exactly three miles east of where we are at right now.

MAGANA: Just because you need to expand?

PRZYSTANSKI: Expansion. You see I have several advisors and I read at least two papers everyday and I know what is going on. I am not living in a box. If you do not expand, if your business is growing, you have business coming in and if you don't keep up with the demand you will die. So I have to, I might be to old for it but I have to do it there is no other way around.

WILEY: I have one question. Did you make topiaries while you were in Haysville?

PRZYSTANSKI: Yes.

WILEY: So you make them there and moved the operation?

PRZYSTANSKI: I think I have shown someone, I have a board that is plywood that shows the small topiaries, are nothing too difficult. You take the wire from coil and then I have a piece of plywood and form. In the beginning because the funds were not there, I just used little nails and just drew a pattern on the plywood and nails on the lines and then just cut pieces of wire and just bend it around. Now I use the drywall screws it works and it is stronger and has bigger bases and then just one piece at a time. Hold it together and put it on the spot welder and weld it and then bend the form and put all the pieces together and you end up with something like this and then it is stuffed with moss.

WILEY: My question was you were producing these in Haysville at the time you moved to Clearwater so you have been doing this longer than just at the Clearwater address?

PRZYSTANSKI: Yes.

WILEY: Any other questions? Thank you. Anyone else to speak in favor? Oh, I am sorry, Jennifer are you ready to present a case or do we need to hear from the rest of the people here that might want to speak in favor of this case.

MAGANA: I can do it either way. I would like to cross-examine before Mr. Przystanski stops his testimony or make a statement or reserve a statement. Thank you. When did you start the production or start the greenhouse in Clearwater? What year was that?

PRZYSTANSKI: I did not start the greenhouse. I moved there in 1984. But the greenhouses were there prior to that.

MAGANA: And that was growing tomatoes at that time?

PRZYSTANSKI: Yes.

MAGANA: You then, how many employees were there in 1984 at Clearwater?

PRZYSTANSKI: Some of the employees who are still in Haysville, they were alternating. There were new ones I think two or three additional. Three to five. I do not have the exact number.

MAGANA: At that time you went there it was at 1984, it was just growing things, there was no welding going on?

PRZYSTANSKI: Yes there was.

MAGANA: What type of welding?

PRZYSTANSKI: Spot welding and Arc welding.

MAGANA: You just testified about some small wires that you just bent them and framed them that did not require welding did it?

PRZYSTANSKI: Yes, it takes spot welding. This is the arc welding.

MAGANA: Your use and your operation expanded and grew with time and your success?

PRZYSTANSKI: Of course.

MAGANA: During that time you wanted to accommodate your operation by building an extra building and adding on a couple of times. Is that correct?

PRZYSTANSKI: That is correct.

MAGANA: And that building a building permit was applied for in September 20, 1994, would that be correct?

PRZYSTANSKI: Yes.

MAGANA: That building is 9926 S. 151st Street West?

PRZYSTANSKI: Yes.

MAGANA: That was described as an agriculture structure?

PRZYSTANSKI: Commercial Agriculture structure.

MAGANA: It just says agriculture.

PRZYSTANSKI: It says commercial.

MAGANA: This also says further comments no commercial usage. Is that correct?

PRZYSTANSKI: It says commercial agriculture. See the builder who built it he lives next door.

MAGANA: That would be Donald Bernstein?

PRZYSTANSKI: Yes. He knew exactly what was going on.

MAGANA: In that building in 1995 or on that building there was an addition further where it also says storage structure for greenhouses. Is that correct?

PRZYSTANSKI: Yes.

MAGANA: It also says building to be used as residential storage structure.

PRZYSTANSKI: We park our cars there.

MAGANA: Actually it is used for more than residential storage. Isn't that correct? It is used for manufacturing.

PRZYSTANSKI: If you call this manufacturing or storing soil?

MAGANA: I will ask you to look at what I will call county exhibit A. You have a website. Is that correct?

PRZYSTANSKI: Yes.

MAGANA: On the first line of the website doesn't it read leading manufacturer of high quality topiaries products? So there would be a manufacturing aspect of this?

PRZYSTANSKI: You can call it manufacturing. It is called art to.

MAGANA: What percentage or portion of you income if you can tell us stems from just plants grown alone with no topiaries or art or anything like that?

PRZYSTANSKI: I would not be able to tell right now.

MAGANA: Would it be fair to say half or less then half?

PRZYSTANSKI: It is difficult for me to speculate.

MAGANA: Has that percentage of just plant source income decreased over the years and the topiary manufacturing portion increased would that be a fair statement?

PRZYSTANSKI: No.

MAGANA: Just the selling plants wholesale, do you do any of that with the topiary?

PRZYSTANSKI: Do I do that? Of course.

MAGANA: Has that percentage of your income stayed the same or decreased?

PRZYSTANSKI: Increased.

MAGANA: And the topiary portion has decreased?

PRZYSTANSKI: No.

MAGANA: As a percentage of your whole operation?

PRZYSTANSKI: No, the topiary parts actually mainly the lot size increased. Right now I am a month behind.

MAGANA: Would you agree that it is a bigger operation than it was in 1984?

PRZYSTANSKI: Not different. More employees.

MAGANA: You do not use different types of equipment, different storage facilities, and different buildings?

PRZYSTANSKI: We have more storage now for soil and for pots and for all the supplies that we

need.

MAGANA: You do not use buildings for simply manufacturing as opposed to greenhouse. Don't you use a building that is not used for greenhouse purposes? Your building that was constructed in the 1990's. Was that used for storage and manufacture?

PRZYSTANSKI: Yes that is not the greenhouse.

MAGANA: It is not a greenhouse? I do not have anything further at this time.

PRZYSTANSKI: That is why we are going to move.

RIDER: Mr. Przystanski, when you sell topiary that is a sale of plants also isn't it?

PRZYSTANSKI: Yes.

RIDER: So they are co-mingled? You sell plants that grow on your topiaries, the building permits these were for agriculture buildings is that correct?

PRZYSTANSKI: Yes.

RIDER: And the storage building, or the manufacturing building or however we are calling that those buildings are where you are making the baskets?

PRZYSTANSKI: Yes.

RIDER: Is that part of the greenhouse and the horticulture part of your business?

PRZYSTANSKI: Yes.

RIDER: I have no further questions.

WILEY: Is there anyone else here in the audience that would like to speak in favor of Mr. Przystanski?

SCOTT HACKMAN, 4912 E. LEWIS, WICHITA, KS: I was employed by Stefan Przystanski, approximately the summer of 1984 through the end of 1985. During that time, I started there mainly just working with the plants. Stefan was always since I started making his topiaries, he had many, many of these wire boards with the figures on there. As I watched him as the months went by I got to where I was cutting wire and we would get just huge coil of wire and then I would cut them length, bend them and just spot weld them stuff them and pretty much the whole nine yards. Absolutely, in 1984 we were making topiaries from scratch.

RIDER: I just want to clarify that you were working in Clearwater.

HACKMAN: Yes, sir.

WILEY: Anybody else here to speak in favor?

RYAN AUST, 10902 W. HARPER, WICHITA KS 67207: Stefan has employed me since 1992. I can also vouch that these same things that he has described of what I have noticed and participated in. I have done a lot of these welding or helped in the making of these baskets, or the greenhouse functions as well.

WILEY: Thank you. Anyone else to speak in favor of this?

ANN WOODS, 209 TURKLE, HAYSVILLE, KS 67060: I have worked for Mr. Przystanski since April 1985. In all that time I have always seen him make his own topiaries. He has made some beautiful topiary. You have seen pictures of them. In fact the first job that I had when I went in there was to plant topiaries and you can image how I felt taking a dibble and sticking it in one of those little teddy bears. I always wait for the coal to scream. I eventually started making delivers for Stefan. One of my favorite delivers was going across country to New York City, Manhattan, to Macys with a truckload of topiary that they had ordered. I think it was a big horse in the back but it took three people to take it out. We planted them, he has pictures of it, I do not know where they are but he has pictures of them. He has always made his own topiary for as long as I have known him. Any questions?

WILEY: Thank you. Anyone else here who wishes to speak?

HACKMAN: I just wanted to say also that back in 1984, in addition to the small figures that we built we were also doing the large ones as well, which I did not necessarily participate in that much. But Stephan did and at the time all that there was greenhouses and then a very small building. So all of this large stuff took place outdoors and we were making 10 to 15 foot tall items and it was just outside in plain site and everybody knew what was going on.

WILEY: Anyone else here to speak in support?

BILL FOREST, METAL BUILDING SUPPLIER AND ERECTOR: I have never worked for Stephan but I hope to in the future. He has contacted me and we have engineering going, a building ordered, and that type of stuff for his new facility over in Clearwater Industrial Park. The building is roughly 75 square feet bathrooms, office, and that type of stuff just so that you know he has and is moving forward on a new facility.

WILEY: When do you expect this new facility to get started?

FOREST: From the time that we ordered and the dirt work can start about anytime as soon as we get drawings through the County. But the building will probably take 8 to 10 weeks to get and during that time we will have dirt work to do and site utilities and culverts that type of stuff.

WILEY: Any questions? Anyone else to speak in support of this? Seeing none is there anyone here that would like to speak in opposition?

DONALD BERNSTEIN, 9840 S. 151st Street West: Which is ten acres immediately north of Mr. Przystanski's. It is unfortunate that I have to be standing here but I am. When the owner purchased this property he commenced to rebuild the six greenhouses that were there that were really in bad shape, and turn the garages into living quarters and he worked day and night. I mean this guy is hard working and I do not deny that. He has built some beautiful, beautiful animals and stuff like that but, he spent almost the first 8 months on nothing but the greenhouses and then after he got the six up,

As I understand it he claims that he built topiary stuff in 1984. But my best memory and belief, he did not start building anything here until mid 1985 as far as topiary. He was growing flowers. He hauled in material to fix the six greenhouses and to build the two new greenhouses. He may have brought some topiary in from elsewhere, maybe the Haysville operation. In September of 1994 he bought a 30 by 45 agriculture building from the company that I am employed by. When we sell a building to anybody they tell us what they are going to use it for and he said that he was going to use it for agriculture storage for the greenhouse operation and that is what I turned in. That is the way that we obtain permits from Sedgwick County as we tell the County Code Enforcement what the owner is going to use them for. Since it has turned into a manufacturing business. He builds an awful lot of hanging pots, I know that there are a lot of them that go in and out of there.

Two years ago, he had so many employees and he only built the topiary by himself now, but he had so many employees that he pumped raw sewage on top of the ground and this was usually done on Saturday afternoons and Sundays. When we asked him to do something about it he said, "What am I going to do about it?" This was not really the best relationship that we were maintaining it was just coming apart literally. We spent \$2900 dollars and moved 47-foot pine trees down our south property line in an effort just to screen him out only to have him stack pallets 10 and 12 foot high on the other side of his fence. The junk is unbelievably, counsel says the thing is cleaned up and I defy that. I would like to have him drive out there and drive into the driveway and see that the junk is cleaned up. There are pallets stacked everywhere out there. It is unbelievable, junk cars, trucks, and rodents, mice and rats we are overrun by these and have been for the last three years. Noise is unbelievable. Trucks, cars, forklifts, radios blaring until 2:00 a.m. Maybe that is when he built topiary I do not know. A neighbor ½ mile south asked him to turn his radio down. We have not been able to open our windows for three years, not at night, because you can't get by without the noise and the greenhouses are what bothers me.

Also that they are asking for the BZA Appeal for the greenhouses to stay. They keep referring to greenhouses, they are on the south 10 acres and the BZA Appeal is on the north 10 acres. I do not understand that unless, staff sent the wrong stuff to us. To the best of my memory and my belief he did not do any of this until 1985. I helped him put a dinosaur out that was on fire in the later part of 1985. We fought that thing for 2 hours because that stuff is highly inflammable. Mr. Przystanski says that he builds all these topiaries by himself but then why did he need fifteen employees? Is what I am wondering. My problem is of manufacturing business in a residential area and that is why I asked for our welfare and safety that I ask you to assist our neighborhood with this matter and deny this motion before you. Thank you.

WILEY: Any question of Mr. Bernstein? Thank you, Sir. Is there anyone else here that wishes to speak in opposition to this request?

JENNIFER MAGANA, ASSISTANT COUNTY COUNSELOR: Here on behalf of the Zoning Administrator, Glen Wiltse in Sedgwick County. The county has no dispute with agriculture exemptions with the types of progress and business people like Mr. Przystanski make. It certainly has no objection to him being grandfathered in the zoning code in 1985 as a greenhouse. The question is, is this a greenhouse today? I would submit it is a changed use, it is a manufacturing operation as evidence by his website information, which is marked as county Exhibit #8. I would submit from his own website he is described as a leading manufacturer of high quality topiary

products. Talking about topiary supplies, topiary frames wholesale, wire-hanging baskets. It may have started as a greenhouse and this is a wonderful business and he should be commended for his hard work. It has simply grown to the point where it is something that is not appropriate, for rural residential and certainly defies that intent of being grandfathered as a greenhouse. Your duty here today is to interrupt the County Zoning Administrators decision. Was it reasonable? Was it arbitrary?

I would submit that it was not unreasonable, it was reasonable, and it was not arbitrary. He did not; the Zoning Administrator did not go out looking for this case to investigate. Citizen complaints brought it forward to his attention. He made an investigation based on all the facts that he could gather, came to the conclusion that this is simply not a proper usage. Primarily, we are looking at the example of the business through the residential storage structure that was built and added onto.

Mr. Wiltse will tell you about the use that is now in that storage structure is not residential storage, it is a manufacturing use. Certainly this business has its place and it is a fine business but it is simply not appropriate for rural residential at this point. I would ask you to consider all the evidence in light of the Zoning Administrators viewpoint being reasonable. Thank you.

WILEY: Are there any questions of Jennifer?

MULLEN: Can I look at the website?

MAGANA: This time I would move to submit County Exhibit #8, a website of Topiary Art Works and Greenhouses. Thank You.

GLEN WILTSE, SEDGWICK COUNTY ZONING ADMINISTRATOR CODE ENFORCEMENT: This case was brought to our attention probably longer back then I care to admit actually. Probably about a year to a year and half ago. With the different zoning staff that we have had it has kept going through different phases and probably brought it to a head last winter sometime. From what I can see with all of the receipts, granted the original greenhouse was setup for growing tomatoes. I think that Mr. Przystanski even admitted that originally he started growing tomatoes there. And not as many flowers possibly in the beginning, whenever he first started the business. From looking through the receipts there may have been one or two receipts for wire and possible welding supplies. I can't remember if there was welding supplies and if there is that much topiary being built you are going to see a larger amount of wire and welding supplies even spot welding supplies of whatever nature. I am not all that familiar with the age of spot welding techniques or how many years ago they really started producing those spot welders in the cost that the average person could afford to buy one of them either. I did not see any evidence within that there.

Then the building permits that we pulled up on file, and I have been with Sedgwick County approximately a little over two years and the building permits had been issued prior to that and we are showing that the permits were issued sometime between 1992 and 1997, I believe. I think there was three separate permits if I remember right. I have aerial shots also showing the land as it lays now as 1997 and that is as new as an aerial as we have showing what I think is seven greenhouses, the house, and the large structure that manufacturing is taking place. My opinion is that manufacturing is manufacturing, whether it be for building wire baskets, or building topiaries. Or if I want to manufacture wheels for a car it is still manufacturing, that is not part of the original greenhouse function. It was a greenhouse originally. That is basically what I based my decision on.

WILEY: Questions of Mr. Wiltse?

WILTSE: I have pictures of the insides of the structure, the outside, the two building permits that

we found and also the aerial shots if you would like to take a look at them.

WILEY: I might just ask one thing. In regards to the four items that you originally cited. Everything but the code deficient building has been taken care of.

WILTSE: I have not had staff out there since it went to court the last time. Since it was being filed in the BZA and we have held off on doing anything. So I can not honestly attest to that.

MAGANA: Referring to the Exhibits that the County has provided to the Board, Glen, Exhibit #1 and #2 were pictures of a metal storage type building can you elaborate on this building and what your staff reported was in that building.

WILTSE: Well there is a large amount of storage product, whether it be soil, the product that is used in the topiary process plus the manufacturing process of the topiary itself. This building was originally granted a permit for anything basically other than besides commercial use and manufacturing is a commercial use. It was permit for residential type storage.

WILEY: So the greenhouse uses would not have been permitted?

WILTSE: Not in that structure itself.

WILEY: Not in that structure.

WILTSE: See they did have some expansion rights, under the legal non-conforming uses back when the property went under county wide zoning. I am not sure when the percentage expansion rights reduced. It had been 50 percent of the total square footage of all of the structures, now the zoning code says 30 percent of all the structures. Which there was six original greenhouses at some point and time there were one possibly, two other ones built but I think that there is now only seven, which we do not show any permits on the seventh one. There was at least one greenhouse and the building permits for the manufacturing area storage area that would have to be considered into the expansion of the greenhouse area of itself.

WILEY: Maybe, I am wrong, the seller permits greenhouse in a rural residential zoning district for all plants, or material grown on site? Isn't that correct?

WILTSE: It would probably be under, but I would have to double-check that. I would hate to say that for a 100 percent positively.

WILEY: Does staff know?

MILLER: Currently, or in 1985?

WILEY: Even now. If it is totally grown by the seller as an agriculture...?

MAGANA: Glen, in the structure that was built in the 1990's that has been expanded and in questions is there any type of growing, plant production, or agriculture use in that building at this time?

WILTSE: No. The only thing that we have seen is the storage and the manufacturing in those buildings themselves.

WILTSE: I can read to you what the agriculture exemption says if you would like. This code shall not apply within the unincorporated area of the county to the use of land for agriculture purposes or to the erection or maintenance of buildings thereon. Provided that such land and buildings are used for agriculture purposes. Residential uses that are accessory to agriculture uses shall be considered agriculture in nature for purposes of this exemption and farm residences thus shall be exempt from the requirements of this code. This exemption shall be of no effect within the corporate limits of the City of Wichita. Those new buildings are not agriculture in nature. They are manufacturing, they do not grow plants, they are in there stuffing the peat moss and constructing the baskets.

MILLER: Currently in the "RR" Rural Residential district under agriculture uses, agriculture is subject to section 3d6b is a permitted use. The definition for agriculture means the use of any land for the purpose of growing plants, crops, trees and other agriculture or forestry products, or for the purpose of raising livestock. This definition shall include as a permitted accessory use the sales of nursery stock, firewood, Christmas trees and other plants of produce raised on site.

WILEY: That is what I was asking.

MILLER: But then you go to subject to section 3d6b and what that says under agriculture is that there shall be no retail, or wholesale permitted in conjunction with agriculture uses in any district from the most restrictive through the "NR" district except on sites of at least 10 acres in size unless a conditional use permit has been approved in accordance with this section.

WILEY: Or prior to 1985?

MILLER: Yes.

MAGANA: Nothing further.

WILEY: We would like for you to recap. What the county is submitting in evidence.

ROGER HUGHEY: I would like each council to recap the evidence that they want the Board to consider. Identify what documents, what slides, photographs, so that we make sure that we have it all.

RIDER: I have a couple of questions for Mr. Wiltse also. Calvin Rider, on behalf of Mr. Przystanski. Mr. Wiltse, we were just looking at the zoning code and I believe that you read the agriculture exemption and that is exempting the use of land for agriculture purpose is that correct? Now is Mr. Przystanski using his land for agriculture purposes?

WILTSE: That part that he is asking for the exemption I do not believe so.

RIDER: So you are asking the Board to divide the land into what is used as agriculture, and what is not used as agriculture.

WILTSE: No. I think you asked for that when you submitted the application because you did not submit both tracts of land.

RIDER: The tract of land that he has is 20 acres. He owns twenty acres of land.

MILLER: That is not what he applied for.

WILTSE: That is not what you applied for.

RIDER: So the area of land that you are saying is what?

WILTSE: The manufacturing land.

RIDER: His use of land out there, whether it is submitted or whether we divided this in any application, his land, he has a twenty acres tract of land is that correct?

WILTSE: I have not seen the legal, I would assume yes.

RIDER: It is one operation, it has a greenhouse operation, topiary operation, the buildings and everything is one area? Is that correct?

WILTSE: I would assume so, but if you have two separate tax keys then you had different options also.

RIDER: It is all zoned the same?

WILTSE: I would assume it is all-rural residential.

RIDER: It is owned by the same individual.

WILTSE: I would assume so.

RIDER: When you have a farmer that has farmland, do you look at what his agriculture use is and then if he has some welding going on in the back barn, do you consider that a non-agriculture use?

WILTSE: No not if he is just going to repair equipment and those types of things no.

RIDER: The farmer is considered to have agriculture use and they are exempt.

WILTSE: Right. You are still allowed to repair your own equipment. Regardless if he sets up a business that is a separate issue.

RIDER: His business is farming.

WILTSE: I say setting up separate business that is like a welding shop for hire or something along those lines automotive shop.

RIDER: You were talking about building permits. These building permits, do you recall they were issued for a structure for greenhouse and they also said for agriculture buildings didn't they?

WILTSE: Which one are we talking about?

RIDER: I don't have the specific exhibit in hand.

WILTSE: Yes, one of them says storage structure for greenhouse and the other says agriculture building and they both specifically say no commercial use on them.

RIDER: They don't have anything on there that says no agriculture use do they?

WILTSE: No.

RIDER: Just no commercial use.

WILTSE: Right.

RIDER: I am going to show you a sewage application permit.

WILTSE: We do not issue those. The Health Department, The Sedgwick County Health Department does that.

RIDER: Looking at the application that was filed it looks like in 1997 that list a commercial business on site doesn't it?

WILTSE: They are a total separate identity. They never check our records; we do not have anything to do with the Health Department on that type of stuff.

RIDER: Mr. Wiltse, do you know how many welding rods you need to spot weld one of these bears?

WILTSE: No, I do not.

RIDER: Do you know if you need any for spot welding?

WILTSE: For spot welding sometimes it is done with heat.

RIDER: How about gas? How much gas is needed to perform spot welding operations?

WILTSE: For that probably none.

RIDER: I have no future questions.

WILEY: Mr. Rider, I do have a question here regarding this statutory warranty deed. It is for ten acres. And not twenty.

PRYSTANSKI: Can I explain something? The reason that you are showing only one plot there. This thing came up a long time ago when Haysville State Bank and now it is Intrust in Haysville, when they finance this property for me, for some reason they left the legal description for the second lot. When I was going through some courtesy, my personal banking and I was defending my rights to my property, it came up that the north part was free of and not attached by loan by the bank. Because an error by the person who typed it the Secretary of the Loan Officer and I think this persist and I thought it was already fixed. Because I talked to the County Clerk and my name is spelled wrong and one of the lots is spelled Przystanski and I think you have all the wrong spelling there. And the other part, the south part is spelled Przystanski and it is spelled correctly. I have known when this survey is so say eight years ago when they surveyed this is north and that is south that the dividing line goes through, I think goes four or five feet into the greenhouses. See this is the greenhouse that is the driveway, this is the house and that is the two little buildings, and then that is the big building. So there is a legal identification problem that has not been taken care of. When I get to tax bills I still notice less time that my name is miss-spelled on one of them.

WILEY: What I was suggesting was that this deed that you gave us a copy of was for 10 acres of land only.

PRZYSTANSKI: It only presents the one, I do not know which one. It is 19.9 or 19.8 total acreage.

WILEY: That is all that I wanted to bring up. Mr. Rider would you like to recap everything that you want submitted in evidence here.

RIDER: We would just like to submit the slides that you have seen today, the bears that are on the table for evidence and the wire. Our position is,...

HUGHEY: Do you want the Board to consider the notebook?

RIDER: Absolutely, yes and the evidence that we presented, Stephan do you want your book back?

PRZYSTANSKI: Yes.

WILEY: No that is the counties.

RIDER: The position that we have is just strictly speaking and looking at the zoning administrators decision that he bases his on not having any welding supplies. The receipts that you have show welding supplies, that there were certainly welding supplies in 1984 and welding was not need even if we did not have any evidence of that. It was not needed for the spot welding as that is a heat resistant just a flash of light without any rod without any gas and never the less there were some evidence there.

The agriculture use, I have heard the readings from the code and the zoning ordinances and the zoning code. What we contend that based upon the existing use and the prior use that we have you are looking back and also need to look at the one that became effective January 1, 1985 to see what was permitted at that time. The agriculture use the Kansas Statues in reading the zoning code and looking at what is required in there Kansas Supreme Court and the Kansas Statues flatly say that agriculture activity is a horticulture activity and you look at the use of the land. Mr. Prystanski's 19.8 or 20 acres of land that he has out there, he is using that no doubt for horticulture uses. For

greenhouse, for ornamental and that and the topiary work that he has been doing since 1984 is a integral part of that use. That is using the plants that he has grown in the greenhouses, and it is all done in that area.

The fact that he is moving part of his operations, I think helps alleviate a lot of problems. I do not want the Board to be mistaken that we are saying that we still desire to do the topiary operations, Mr. Przystanski does at the area that he currently does them now and he has done so since 1984. The existing use granted that gets us to where he was in 1985 and where he was in 1994 when another code was adopted and that gets us to those places. I think we have drawn that back to the Board to show that he has had greenhouse and he had topiary and that. It does not get us to the expanses the additional buildings but the agriculture use sure does. It allows us to be exempt from the zoning code. I know that it is hard for the Zoning Administrator and for the Boards, I represent school boards all over and you don't have jurisdiction in this area. It is the purpose of the state has been to protect agriculture land and we think of agriculture land as farming the wheat, the raising of livestock. But, our statutes, that I would be glad to submit to counsel, the definitions are clear as to what the agriculture, It only says horticulture for commercial purposes in the statute so I think that is important.

Final conclusion, what does Mr. Przystanski use his land for? Has he built a welding operation that he grows a few plants? No. He has a planting and greenhouse operation that he uses and he sells topiaries. He is not using it to claim a farmstead or a homestead, he lives there that is his home and his livelihood. Regardless, of how these buildings were built, whether they were built for nude dancing operations, what they are used for today is what the courts look at. Is the use agriculture now? That is what it is agriculture. If there was any deficiency in the applications for the permit I put to you that the use today is agriculture. Irrespective to how they were built. It is an agriculture use. Thank you.

MAGANA: To summarize the exhibits submitted by county. Items #1 through #7 are all photographs of the property in question. The Administrator has testified that items #1 and #2 of the building in questions that has got we would submit no agriculture use involved. The other photographs of the same building or of the area further in support of that building and the contents. The items #8 and #9, I believe are the two building permits. Item #10 are the website page. I should check on that. Item #8 would be the website page. Item #9 and #10 are the building permits applied for and received during the 1990's, I would ask the Board to consider all that evidence as well as the county will be submitting what will be marked as Item #11 aerial maps, there Items #11 through #15 will be aerial photos of the property in question for demonstrating purposes. In summary, I ask the Board to consider that again, the burden is on the appellant to show the Zoning Administrators actions were arbitrary or unreasonable. I submit to you that they are neither.

You must find that Mr. Wiltse was not arbitrary and reasonable in coming to this conclusion and the evidence before you I would submit would not lend itself to that finding. I would ask you to take notice of that Appeal itself, it is listed on the nine acres. We are talking about the north nine acres is my understanding. I would ask the appellant Mr. Przystanski to tell us what percentage of income he derives from just the growing or the producing of agriculture products he was not able to do so. That would have been some helpful evidence to bear his burden and to show that he is operating a greenhouse unconformity and agriculture use. I submit to you that it is not, what makes his business so very successful and unique is the manufacture aspect of the unique topiary business that is what he has come up with. Which again is a commendable business but we would submit again that it is simply not in character with the greenhouse operation for which he was grandfathered and ask the Board to uphold the Zoning Administrators opinion. Thank you.

WILEY: I suggest that you look at the aerial. I think they are MAPD aerial photographs.

MAGANA: County Exhibits #1 through #7 I believe photographs were taken in 1998. Is that correct Glenn?

WILTSE: Correct.

MULLEN: Is everything fine with you Mr. Rider?

RIDER: Yes, I just haven't seen those photograph and I would like to make a motion to the Board. **<CAN NOT HEAR> AWAY FROM MICROPHONE.** The land that we are talking about is nine acres and we are cutting through some of the greenhouses. It is one tract of land and one operation. Other than that I have no objection.

MULLEN moves and **TIDEMANN** seconds to recess for an executive session probably about 10 minutes to consider the CoBZA 2-99 Appeal. Back no sooner than 5:30 PM.

MOTION CARRIES.

WILEY: We will call the meeting back to order. Or reconvene the meeting.

TIDEMANN moves and **MULLEN** seconds that the determination letter of March 15, 1999 by the County Zoning Administrator is reversed for the reasons of a prior nonconforming use.

MOTION CARRIES 4-0. Approved

WILEY moves and **MULLEN** seconds to approve the minutes of February 1, 1999.

MOTION CARRIES 4-0. Approved

OTHER MATTERS:

MILLER: We could save that for the next time if you would rather do that.

WILEY: I think the Board would rather. Due to the lateness of the hour.

TIDEMAN moves **WILEY** seconds to adjourn the meeting.

MEETING OVER AT 5:37 p.m.